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7 **Co-counsel for Defendants,**  
**Jon Shields and Misty Shields**

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA

10 GLENDA MARIE PRIESTLEY, an individual,

11 Plaintiff,

Case No: 2:21-CV-01657-JCM-DJA

12 vs.

13 JON SHIELDS, an individual; MISTY SHIELDS,  
14 an individual; DOES 1 through 20, inclusive, and  
15 ROE BUSINESS ENTITIES 1 through 20,  
inclusive,

16 Defendants.

17 **STIPULATION AND ORDER TO ALLOW DEFENDANT TO CONDUCT A FED.R.CIV.P. 35**  
**EXAM OF PLAINTIFF GLENDA MARIE PRIESTLEY**

18 Plaintiff GLENDA MARIE PRIESTLEY, by and through his counsel of record,  
19 BERTOLDO BAKER CARTER & SMITH, and JON and MISTY SHIELDS, by and through their  
20 counsel of record, DENNETT WINSPEAR, LLP, hereby stipulate to the NRCP 35(a) examination  
21 of Plaintiff GLENDA MARIE PRIESTLEY.

22 1. The Rule 35 examination of Plaintiff is currently scheduled to take place with Dr.  
23 John Herr on [date] at [time].

24 ...

25 ...

26 ...

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1           2. All paperwork to be completed by Plaintiff shall be provided to Plaintiff's counsel  
2 at least ten (10) days prior to the examination for Plaintiff's counsel to review and for Plaintiff to  
3 complete. Plaintiff will bring the completed paperwork to the examination, which will help to  
4 ensure timely completion of the examination.

5           3. Defendants' representatives shall be responsible for gathering films unless  
6 already in Plaintiff's possession.

7           4. Plaintiff may audio record the examination. Dr. Herr may also audio record the  
8 examination. Plaintiff's audio recording and Dr. Herr's audio recording shall be disclosed within  
9 fourteen (14) days of the examination.

10          5. Defense shall not have anyone other than the physician and his staff attend the  
11 examination.

12          6. Plaintiff may have an observer attend the examination. Plaintiff shall identify to the  
13 defense, within ten (10) days prior to the examination, the name of the observer and relationship  
14 to the Plaintiff. The observer will not be Plaintiff's attorney or an employee of Plaintiff's attorney's  
15 office.

16          7. The observer may not interfere or obstruct the examination in any way. If Dr. Herr  
17 believes the observer is interfering or obstructing with the examination in any way, Dr. Herr may  
18 pause the examination and contact defense counsel. Counsel will meet and confer regarding the  
19 issue. If, after the observer is informed not to interfere or obstruct with the examination, the  
20 observer continues to interfere or obstruct the examination then Dr. Herr may terminate the  
21 examination. If that occurs, Defendants shall have the right to have Dr. Herr resume the Rule 35  
22 exam at another date/time, with another observer present. Plaintiff will be responsible to pay Dr.  
23 Herr's costs/expense associated with this second, continued examination.

24          8. Video-recording of the examination will not be permitted.

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1       9. It is expected that the exam will start within thirty (30) minutes of the scheduled  
2 starting time and Plaintiff's time in the physician's office will not exceed ninety (90) minutes from  
3 the scheduled start time. If either of these time frames are exceeded, Plaintiff will call his counsel  
4 and Plaintiff's counsel will contact Defendants' counsel and attempt to rectify the situation. If the  
5 parties are unable to rectify the situation at that time, the parties will work together to reschedule  
6 the Rule 35 examination at a mutually convenient time for Plaintiff and the doctor. Plaintiff will not  
7 be responsible for any costs which may be incurred if the Rule 35 Exam must be rescheduled  
8 due to the time limits set forth herein being exceeded.

9       10. If Plaintiff fails to appear for the Rule 35 Exam, Plaintiff will not be required to pay  
10 the costs associated with Plaintiff's failure to appear if the parties determine the failure to appear  
11 was due to an emergency. If the parties are unable to agree as to whether the reason for  
12 Plaintiff's failure to attend the exam constituted an emergency, the parties agree to submit the  
13 issue to the Magistrate Judge. Plaintiff will not be responsible to pay the costs associated with  
14 his failure to appear at the exam if the Magistrate Judge determines an emergency situation was  
15 the cause for Plaintiff's failure to appear at the exam. Otherwise, Plaintiff will be required to pay  
16 the costs associated with his failure to appear at the exam.

17       11. Dr. Herr will not engage in contact with Plaintiff's witnesses including treating  
18 health care providers and retained experts.

19       12. The physical examination shall be limited to the parts of the body which bears a  
20 reasonable relationship to the body parts that Plaintiff has placed in controversy.

21       13. No physically painful or intrusive procedures may be utilized during the  
22 examination, nor shall Plaintiff be required to disrobe other than what is absolutely necessary to  
23 assist the examiner.

24       14. No x-rays, radiographs or other diagnostic tests, intrusive or painful procedures,  
25 or treatment may be obtained during the examination without Plaintiff's counsel's prior approval.

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27       ...

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1       15. Defendants will produce a copy of Dr. Herr's Rule 35 exam report by the deadline  
 2 for initial expert disclosures established by the modified Scheduling Order.

3 DATED this 7th day of February, 2023.

DATED this 7th day of February, 2023

4       **DENNELL WINSPEAR, LLP**

**BERTOLDO BAKER CARTER & SMITH**

5  
 6       By /s/ Ryan L. Dennett  
 7 RYAN L. DENNETT, ESQ.  
 8 Nevada Bar No. 005617  
 9 BRENT D. QUIST, ESQ.  
 Nevada Bar No. 009157  
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**Attorneys for Defendants**

10  
 11       By /s/ Paul R.M. Cullen  
 12 PAUL R. M. CULLEN, ESQ.  
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 Las Vegas, Nevada 89117  
**Attorneys for Plaintiff**

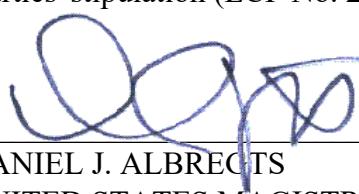
**ORDER**

13       The Court denies the stipulation for a Rule 35 exam without prejudice because it contains a few  
 14 deficiencies.

15       First, the parties refer to the Nevada Rules of Civil Procedure as the source for their Rule 35  
 16 examination. However, "[u]nder the *Erie* doctrine, a federal court sitting in diversity must apply  
 17 the substantive law of the forum state and federal procedural law." *Freteloco v. Smith's Food and*  
*Drug Centers, Inc.*, 336 F.R.D. 198, 202 (D. Nev. June 29, 2020) (applying *Erie R.R. Co. v.*  
*Tompkins*, 304 U.S. 64 (1938) to determine that Federal Rule of Civil Procedure 35 governs a  
 18 court-ordered exam).

19       Second, under Federal Rule of Civil Procedure 35(a)(2)(B), an order setting an exam "must specify  
 20 the time... [and] place ...of the examination." But those details are missing here.

21       **IT IS THEREFORE ORDERED** that the parties' stipulation (ECF No. 25) is **DENIED**  
**WITHOUT PREJUDICE.**



22  
 23       DANIEL J. ALBRECHTS  
 24       UNITED STATES MAGISTRATE JUDGE

25       DATED: February 9, 2023

## Theresa Amendola

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**From:** Paul Cullen <Paul@nvlegaljustice.com>  
**Sent:** Tuesday, February 7, 2023 4:24 PM  
**To:** Theresa Amendola  
**Cc:** Brent Quist  
**Subject:** RE: Priestly v Shields

Thank you. You have my permission to esign.

**Paul R.M. Cullen, Esq.**  
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**From:** Theresa Amendola <tamendola@dennettwinspear.com>  
**Sent:** Tuesday, February 7, 2023 4:00 PM  
**To:** Paul Cullen <Paul@nvlegaljustice.com>  
**Cc:** Brent Quist <bquist@dennettwinspear.com>  
**Subject:** Priestly v Shields

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Mr. Cullen:

I had to change the pagination on the Stip as the Judges in Fed Court don't like their Orders on pages that have no other text. It is the same – just repaginated. I wanted you to know that so when I file it and it looks different, you will know why.

Thank you.

Theresa

*Theresa Amendola*

Assistant to

Ryan L. Dennett, Esq.

Jennifer Insley Micheri, Esq.

Meredith L. Holmes, Esq.

Direct dial: 702-932-2625

My normal working hours are Monday through Thursday from 8:30 a.m. to 5:00 p.m.



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